

Clerk File No. 309766

Clerk File No. 309766

Department of Executive Administration Rule  
No. 5-043, implementing Seattle Business Tax  
Ordinance relating to engaging in business.

The City of Seattle – Legislative Department

Clerk File sponsored by: \_\_\_\_\_

Committee Action:		
Date	Recommendation	Vote

This file is complete and ready for presentation to Full Council. \_\_\_\_\_

Full Council Action:		
Date	Decision	Vote

Related Legislation File: \_\_\_\_\_

Date Introduced and Referred:	To: (committee):
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action:	Disposition: Filed

1/23/09  
**Date Filed with City Clerk**  
Emilia M. Sanchez  
**By**

**THE CITY OF SEATTLE**  
**DIRECTOR'S RULE**  
**IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE**  
**RULE 5-043**

**Seattle Rule 5-043**     **Engaging in Business**

- (1) **Tax imposed on engaging in business.** Seattle Municipal Code Chapter 5.45 imposes an excise tax upon the privilege of "engaging in business activities" within Seattle. The tax is measured by the value of products, gross proceeds of sales, or gross income derived in whole or in part from such business activities. The amount of tax is determined by multiplying the measure of the tax by the applicable rate. The measure and the rate that apply to a business activity is determined by the tax classification of the activity.
- (2) **Definitions.**
- (a) The term "engaging in business activity" means commencing, conducting, or continuing in business, and also the exercise of corporate or franchise powers, as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.
- (b) The terms "office" and "place of business" are defined in SMC 5.30.040.
- (3) **Business activities on which tax is imposed.** The definition of engaging in business is broad and extends to all activities performed with the object of gain, benefit or advantage with which Seattle has nexus.
- (a) Gain, benefit or advantage. A person is engaged in business if it performs activities with the object of gain, benefit, or advantage to the person. The gain, benefit or advantage may be indirect. The activity need not actually result in any gain, benefit, or advantage, as long as any of those were its object.
- (b) Nexus. A person has created nexus with Seattle if, whether itself or through others acting on its behalf, it:
- (i) is physically present in the City; or
- (ii) endeavors to maintain a share of the market within the City; or
- (iii) avails itself of the economic benefits of the City.
- Once a person has established nexus, a person is presumed to continue in business in Seattle as long as the person continues to generate gross proceeds of sales, gross income, or value resulting from the original nexus generating activity.
- (c) No physical presence required. A person may be engaged in business activities in Seattle whether or not it has an office, other place of business, or any other physical location in the City. A person is engaged in business activities in Seattle if it seeks to maintain a share of the market in the City or otherwise avails itself of the economic benefits of the Seattle market by directing its activities at that market.
- (4) **Examples of engaging in business activities.** The activities listed in this section are illustrative only and are not intended to narrow the definition of "engaging in business" above. The City expressly intends that engaging in business include any activity sufficient to establish nexus for purposes of applying the tax under the law and the constitutions of the United States and the State of Washington. Without being all inclusive, any one of the

**THE CITY OF SEATTLE**  
**DIRECTOR'S RULE**  
**IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE**  
**RULE 5-043**

following activities conducted within the City by a person, or its employee, agent, representative, independent contractor, broker or another acting on its behalf constitutes engaging in business and requires a person to register and obtain a business license:

- (a) Owning, renting, leasing, maintaining, or having the right to use, or using, in connection with a business activity, tangible personal property, intangible personal property, or real property permanently or temporarily located in the City;
- (b) Owning, renting, leasing, using, or maintaining, an office, place of business, or other establishment in the City in which business activities are conducted;
- (c) Soliciting sales;
- (d) Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance;
- (e) Providing technical assistance or service, including quality control, product inspections, warranty work, or similar services on or in connection with tangible personal property sold by the person or on its behalf;
- (f) Installing, constructing, or supervising installation or construction of, real or tangible personal property;
- (g) Soliciting, negotiating, or approving franchise, license, or other similar agreements;
- (h) Collecting current or delinquent accounts;
- (i) Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials;
- (j) Providing disinfecting and pest control services, employment and labor pool services, home nursing care, janitorial services, appraising, landscape architectural services, security system services, surveying, and real estate services including the listing of homes and managing real property;
- (k) Rendering professional services such as those provided by accountants, architects, attorneys, auctioneers, consultants, engineers, professional athletes, barbers, baseball clubs and other sports organizations, chemists, consultants, psychologists, court reporters, dentists, doctors, detectives, laboratory operators, teachers, veterinarians;
- (l) Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings;
- (m) Training or recruiting agents, representatives, independent contractors, brokers or others domiciled or operating on a job in the City, acting on its behalf, or for customers or potential customers;
- (n) Investigating, resolving, or otherwise assisting in resolving customer complaints;
- (o) In-store stocking or manipulating products or goods, sold to and owned by a customer, regardless of where sale and delivery of the goods took place;

**THE CITY OF SEATTLE**  
**DIRECTOR'S RULE**  
**IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE**  
**RULE 5-043**

- (p) Delivering goods in vehicles owned, rented, leased, used, or maintained by the person who sold the goods or another acting on its behalf; and
  - (q) Accepting or executing a contract with the City, irrespective of whether the goods or services are delivered within or without the City, or whether the person's office or place of business is within or without the City.
- (5) Safe harbor for persons engaging in certain business activities.** SMC 5.30.030 allows a person to engage in certain business activities in Seattle without being required to obtain a business license or pay tax.
- (a) Activities allowed without business license or tax payment. A person may perform one or more of the following business activities without licensing and paying tax to Seattle, provided that it engages in no other business activities in or with the City. If, in addition to the activities in this subsection (5)(a), a person performs one or more of the business activities listed in subsection (4), or another business activity, the person must register and pay tax.
    - (i) Meeting with suppliers of goods and services as a customer.
    - (ii) Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions.
    - (iii) Attending meetings, such as board meetings, retreats, seminars, and conferences, or other meetings wherein the person does not provide training in connection with tangible personal property sold by the person or on its behalf.
    - (iv) Renting tangible or intangible property as a customer when the property is not used in the City.
    - (v) Attending, but not participating in, a "trade show." Persons participating at a trade show shall review the City's trade show ordinance, SMC Chapter 6.20.
    - (vi) Conducting advertising through the mail.
    - (vii) Soliciting sales by phone from a location outside the City.
  - (b) Delivery by common carrier. A seller located outside the City merely delivering goods into the City by means of common carrier is not required to register and obtain a business license provided that it engages in no other business activities in or with the City. If, in addition to delivering goods by common carrier, a seller performs one or more of the business activities listed in subsection (4), or another business activity, the person must register and pay tax.

Effective: July 15, 2005  
Amended: January, 2009

**THE CITY OF SEATTLE**  
**DIRECTOR'S RULE**  
**IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE**  
**RULE 5-043**

**DIRECTOR'S CERTIFICATION**

I, Dwight Dively, Finance Director of the City of Seattle, do hereby certify under penalty of perjury of law, that the within and foregoing is a true and correct copy as adopted by the City of Seattle, Department of Executive Administration.

DATED this 20<sup>TH</sup> day of January 2009.

CITY OF SEATTLE,  
a Washington municipality

By: \_\_\_\_\_

  
Dwight Dively, Director  
Finance Department